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OFFICE OF PETITIONS

In re	:
Kiyoshi Kobayashi	:
Application No. 10/025,317	: DECISION ON APPLICATION
Filed: December 18, 2001	: FOR PATENT TERM ADJUSTMENT
Patent No. 6,836,957	:
Issued: January 4, 2005	:

This is a decision on the "PETITION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)", filed January 24, 2005. Patentee requests that the patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred ninety-four (294) days to four hundred nine (409) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **three hundred sixty-two (362)** days.

On July 28, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was three hundred ninety-two (392) days. On January 4, 2005, the above-identified application matured into U.S. Patent No. 6,836,957. The patent issued with a Patent Term Adjustment of two hundred ninety-four (294) days.

Patentee states that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of two hundred ninety-four (294) days based on an adjustment for PTO delay of three hundred ninety-three (393) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by applicant's delays of one (1) day pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and ninety-eight (98) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The PTO delay of 393 days and applicant delay of 1 day have been reviewed and found to be correct. The adjustment of 98 days is at issue.

Patentee argues that he should not have been assessed applicant delay of ninety-eight (98) days for the filing of an Information Disclosure Statement after the Notice of Allowance. Alternatively, patentee contends that if applicant delay is to be incurred, that delay should be zero (0) days, since no Office action or notice was mailed in response to the IDS. In addition, patentee argues that the Office should have incurred additional PTO delay of seventeen (17) days for its failure to issue the patent within three years of filing.

The assessment of applicant delay for the filing of an Information Disclosure Statement after the Notice of Allowance has been found to be correct. The IDS did not contain the statement that each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than **thirty** days prior to the filing of the IDS. See 37 C.F.R. 1.704(d). However, the calculation of 98 days was improper. The IDS was filed on September 29, 2004. The next Office communication in response to the IDS was the Interview Summary mailed on October 28, 2004. Pursuant to 37 C.F.R. §1.704(c)(10)(i), applicant should have incurred delay of thirty (30) days, not 98 days.

Lastly, Patentee's argument that the PTO should have incurred additional delay of seventeen (17) days for the failure of the Office to issue the patent within three years has been found to be unpersuasive. As the 17 days of PTO delay overlap with the 393 days of PTO delay already accorded, this delay does not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 C.F.R. § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. § 1.322 is appropriate. The correct determination of patent term adjustment is three hundred sixty-two (362) days (393 days of PTO delay, reduced by 31 (30 + 1) days of applicant delay).

Receipt of the \$200 PTA fee is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **three hundred sixty-two (362)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

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we

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